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 8 WELLS FARGO BANK, N.A.

9  
 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 SARAH MONTGOMERY,

13 Plaintiff,

14 vs.

15 WELLS FARGO BANK, NATIONAL  
 ASSOCIATION an FDIC insured corporation  
 16 and does 1 through 100, inclusive,

17 Defendant.

Case No.:

State Case No. HG12637438

**NOTICE OF REMOVAL OF  
 UNLIMITED CIVIL ACTION UNDER  
 28 U.S.C. § 1332 [DIVERSITY  
 JURISDICTION] OR IN THE  
 ALTERNATIVE UNDER 28 U.S.C. §  
 1441(B) & (C) (FEDERAL QUESTION  
 JURISDICTION)**

Complaint Date: July 2, 2012

18  
 19  
 20 **TO THE CLERK OF THE ABOVE-ENTITLED COURT; THE HONORABLE**  
 21 **UNITED STATES DISTRICT JUDGE AS ASSIGNED; PLAINTIFF AND HER**  
 22 **ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE that defendant Wells Fargo Bank, N.A., successor by merger  
 24 with Wells Fargo Bank Southwest, N.A., formerly known as Wachovia Mortgage, FSB, formerly  
 25 known as World Savings Bank, FSB ("Wells Fargo") hereby provides this Notice of Removal  
 26 based on diversity of citizenship, pursuant to 28 U.S.C. § 1441 & 1332, or alternatively based on  
 27 federal question jurisdiction, pursuant to 28 U.S.C. § 1446, and hereby removes to this Court the  
 28 state court action described below.

ORIGINAL

ADR E-filing

**FILED**  
 JUL 26 2012  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

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MEJ

BY FAX

# **I. THE STATE COURT ACTION**

On July 2, 2012, the complaint in Case No. HG12637438, entitled as captioned above, was filed in the Superior Court of the State of California, County of Alameda (the "State Court Action").

In the Complaint Plaintiff asserts three causes of action: (1) violation of Fair Credit Reporting Act; (2) violation of California Consumer Credit Reporting Agencies Act; and (3) violation of California Unfair Business Practices Act.

Plaintiff served Wells Fargo on July 3, 2012.

Attached collectively hereto as Exhibit A are a copy of the complaint and all other papers in Wells Fargo's possession either filed by Plaintiff or issued by the Court as of the time of filing this Notice of Removal.

## **I. JURISDICTION**

### **A. DIVERSITY OF CITIZENSHIP**

This Court has jurisdiction of this case under 28 U.S.C. § 1332 because the citizenship of the parties is entirely diverse and the amount in controversy exceeds \$75,000.00.

#### **1. Plaintiff is a Citizen of California**

Plaintiff is a citizen of California based on domicile, as she alleges residency in Alameda County. (Compl., ¶ 3.) *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) ("Residence alone is not the equivalent of citizenship, but the place of residence is prima facie the domicile.").

#### **2. Defendant Wells Fargo Bank, N.A. is a Citizen of South Dakota**

Pursuant to 28 U.S.C. § 1348, defendant Wells Fargo Bank, N.A., as a national banking association, is a citizen of the state where is "located." In 2006, the United States Supreme Court, after a thorough examination of the historical versions of § 1348 and the existing case law, held that "a national bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of incorporation, is located." *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306-307 (2006) ("Schmidt").

Wells Fargo, with its main office located in Sioux Falls, South Dakota, is a citizen of



1 South Dakota. Attached hereto as Exhibit \_\_\_ are true and correct copies of the FDIC Profile and  
 2 the Articles of Association for Wells Fargo Bank, National Association, as issued by the Office of  
 3 the Comptroller of the Currency, Administrator of National Banks, reflecting that Wells Fargo (at  
 4 Article II, § 1) has its main office in Sioux Falls, South Dakota.

5           a.       **The Post-Schmidt, Published Decisions Hold that a National Bank Is**  
 6                   **Only a Citizen of 1-State, Here South Dakota**

7           The Supreme Court in *Schmidt* did not decide whether a national bank may also be a  
 8 citizen of a second State, that of its principal place of business, because the national bank there  
 9 had its main office and principal place of business in the same state. *Schmidt*, at 315, n. 8 and  
 10 317, n. 9. However, the Supreme Court in *Schmidt* highlighted the fact that § 1348 did not  
 11 include the principal place of business language: "...§ 1348, however, does not refer to 'principal  
 12 place of business'; it simply deems such associations 'citizens of the States in which they are  
 13 respectively located.' *Schmidt*, at 317, n. 9 (emphases added) (calling 28 U.S.C. § 1332(c)(1) a  
 14 "counterpart provision" to § 1348). "[T]he fairest reading of footnote nine is that the Supreme  
 15 Court expressed skepticism over whether the term 'located' in § 1348 included a national bank's  
 16 'principal place of business' in view of the absence of such term in the statute." *Excelsior Funds,*  
 17 *Inc. v. J.P. Morgan Chase Bank, N.A.*, 470 F. Supp. 2d 312 (S.D.N.Y. 2006) (rejecting inclusion  
 18 of principal place of business test).

19           Since *Schmidt*, the published decisions have held that § 1348 does not include the  
 20 principal place of test, leaving national banks a citizen of only one state – that of its main office.

21           Mostly recently, in *Wells Fargo Bank, N.A. v. WMR e-PIN, LLC*, 653 F.3d 702, 710 (8th  
 22 Cir. Sept. 2, 2011) ("*WMR*"), the Eighth Circuit explicitly rejected including the principal place  
 23 of business test in § 1348, because that test was not a test for citizenship until 1958, ten (10) years  
 24 after § 1348 was enacted:

25           In 1948, when Congress last amended § 1348, it had not yet created  
 26           principal-place-of-business citizenship. At that time the term "located"  
 27           referred to the state in which the national bank had its main office, as  
 28           designated by its articles of association. Moreover, when Congress  
           introduced principal-place-of-business citizenship for state banks and  
           corporations in § 1332(c)(1), it made no reference to jurisdictional parity,  
           nor to national banks or § 1348. And nothing in § 1348 indicates that it

would incorporate by reference any subsequent change in the statutes governing jurisdiction over state banks and corporations. These circumstances strongly suggest that, with the passage of §1332(c)(1), Congress reconfigured the jurisdictional landscape of state banks and state corporations, but left that of national banks undisturbed. [¶¶] Had Congress wished to retain jurisdictional parity in 1958, it could have unequivocally done so. It did not, and consequently the concept no longer applies. Whether it ought to be revived is a policy question for Congress, not the federal courts. **We will not import a jurisdictional concept into § 1348 that was unknown at the time of its adoption.** Accordingly, we hold that, pursuant to § 1348, a national bank is a citizen only of the state in which its main office is located.

*Id.* at 708 (emphases added). *Moreno v. Wells Fargo Bank, N.A.*, No. C -11-05189, 2011 U.S. Dist. LEXIS 146195 (N.D. Cal. Dec. 21, 2011) (J. Laporte), following *WMR*.

Even before *WMR*, the published<sup>1</sup> District Courts decisions in California had also found Wells Fargo to be a citizen of only South Dakota. “**B. Wells Fargo is not a citizen of California.** [¶¶] ..., this Court will decline Plaintiffs’ invitation to apply a principal place of business test to Wells Fargo. Consequently, the Court concludes that Wells Fargo is a citizen of the state in which its main office, as specified in its articles of association, is located. *See Schmidt*, 546 U.S. at 318.” *DeLeon v. Wells Fargo Bank, N.A.*, 729 F. Supp. 2d 1119, 1124 (N.D. Cal. 2010) (original bold, underline added) (also holding “Moreover, in footnote 9, the [Supreme Court in *Schmidt*] recognized the imperfect parity between corporations and national banks...”). *Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d 1022, 1028 (N.D. Cal. 2010) (“Wells Fargo is a citizen of South Dakota for purposes of diversity.”).

b. ***WMR* Dissent’s Reliance on *American Surety* is Erroneous For Several Reasons**

The *WMR* dissent relied on *American Surety v. Bank of Cal.*, 133 F.2d 160 (9th Cir. 1943) as Ninth Circuit precedent that a national bank’s principal place of business is used to determine citizenship. *WMR*, 653 F.3d at 716. Under the 1911 predecessor to § 1348, *American Surety* held:

No case defining “located”, in this connection, has come to our attention.  
The quotation from the cited [statutory] section reveals a departure from

<sup>1</sup> The unpublished decisions are split.

the old rule that the incorporation of national banking associations under the laws of the United States is a basis for federal jurisdiction. [Citation] There would appear to be a close analogy between such a bank and a corporation national in scope. The citizenship of a corporation is fixed by its principal place of business, a rule which prevails even though it extends its field of endeavor into other states under the sanction of the laws of such other states. *St. Louis & San Francisco Ry. Co. v. James*, 161 U.S. 545, 16 S.Ct. 621, 40 L.Ed. 802; *Southern Ry. Co. v. Allison*, 190 U.S. 326, 23 S.Ct. 713, 47 L.Ed. 1078. In addition, a logical interpretation of the phraseology of 28 U.S.C.A. § 41(16) leads to the conclusion that the “States in which they [national banking associations] are respectively located” are those states in which their principal places of business are maintained.

*American Surety*, 133 F.2d at 161-62 (original italics; other emphases added). *American Surety* applied only the principal place of business test and did not even consider the main office test.<sup>2</sup> See generally *Id.*

Since *WMR* came out, a few California District Courts have read *American Surety* to continue to be viable after *Schmidt*, as detailed below. However, the dissent’s and those cases’ reliance on *American Surety* as continuing to be viable is erroneous for the following reasons: (i) *Schmidt* has abrogated *American Surety*; (ii) *American Surety*’s premise that “located” is undefined was superseded by statute in 1994, as pointed out by *Schmidt*; (iii) importantly, *American Surety*’s application of the principal place of business test, even to corporations, was wrong according to the Supreme Court in *Hertz*; and, (iv) *American Surety* is not controlling under Ninth Circuit law because it merely assumed that the principal place of business test was the correct standard for purposes of reaching a decision on the merits.

#### i. *Schmidt* Abrogated *American Surety*

The first case to rely on *American Surety*’s continuing viability, post-*Schmidt*, is *Guinto v. Wells Fargo Bank*, No. CIV.S-11-372, 2011 U.S. Dist. LEXIS 114986 (E.D. Cal. Oct. 4, 2011) and is discussed as an example. *Guinto* held that, because *Schmidt*’s footnote 9 did not

<sup>2</sup> See also *Bank of Cal. Nat’l Ass’n v. Twin Harbors Lumber Co.*, 465 F.2d 489, 491 (9th Cir. 1972)(bank alleged to have “principal office” in California; held to be California citizen); *U.S. Nat’l Bank v. Hill*, 434 F.2d 1019, 1020 (9th Cir. 1970)(citing *American Surety* in interpreting prior version of venue statute); *Country Nat’l Bank v. Mayer*, 788 F.Supp.1136, 1142 (E.D.Cal. 1992)(following *American Surety* on citizenship and diversity in dicta; complaint alleged violations of 12 U.S.C. § 1817(j) & 15 U.S.C. § 78a).

1 completely foreclose applying the principal place of business test in conjunction with the main  
 2 office test, *American Surety* continues to be viable. *Id.* at 11 (“it was not necessary [in *Schmidt* to  
 3 decide] . . . whether the bank *was also* located in North Carolina *on account of the location of its*  
 4 *principal place of business* . . . . This court believes that Footnote 9 is too slender a reed [to not  
 5 follow *American Surety*]”) (emphasis added); *accord Rouse v. Wachovia Mortgage FSB*, No.  
 6 EDCV 11-00928, 2012 U.S. Dist. LEXIS 6962 (C.D. Cal. Jan. 13, 2012).

7 However, *American Surety* applied only the principal place of business test. This is  
 8 inconsistent with *Schmidt*, which unequivocally adopted the “at least main office” test. *Id.* at 307,  
 9 318. At most, *Schmidt* left open the possibility that the “main office plus principal place of  
 10 business” test could be used. *Id.* at n. 8.

11 Therefore, *American Surety* and *Schmidt* both held for single, but different, standards for  
 12 citizenship. Using the principal place of business test to the exclusion of main office as *American*  
 13 *Surety* did is simply irreconcilable with *Schmidt*. Naturally, *Schmidt* must now prevail. *Miller v.*  
 14 *Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (lower courts bound by intervening Supreme Court  
 15 authority where “clearly irreconcilable” with prior Ninth Circuit ruling; cases need not be  
 16 identical).

17 Just recently, the Court in *Flores v. Wells Fargo Bank, N.A.*, No. 3:11-cv-6619, 2012 U.S.  
 18 Dist. LEXIS 32648 (N.D. Cal. Mar. 12, 2012), held that:

19 **B. *Schmidt* Abrogated *American Surety***

20 \* \* \* [¶]

21 *American Surety* cannot be reconciled with the Supreme Court’s decision  
 22 in *Schmidt*. The *American Surety* court held that “[t]he trial court was right  
 23 in holding that defendant is a citizen *only* of the state in which its principal  
 24 place of business is located, the State of California.” 133 F.2d at 162  
 25 (emphasis added). In other words, *American Surety* held that the principal  
 26 place of business rule is the exclusive test for citizenship of national banks  
 for diversity jurisdiction purposes. In *Schmidt*, in contrast, the Supreme  
 Court interpreted the same word—“located”—to mean that a national bank  
 is a citizen of the state in which its main office, as set out in its articles of  
 association, is located. 546 U.S. at 307. Thus, *Schmidt* conflicts with  
*American Surety*.

27 *Flores*, at \*\*6 & 7 (original bold, underline added).

28 *Flores* also pointed out that amongst the many uses of the word “located” in the National



1 Bank Act, none of those uses refers to the principal place of business. *Id.* at \*6. In fact, one of  
2 those provisions, as detailed below, statutorily links “main office” and “locate.”

3 ii. **American Surety’s Premise that “Located” is Undefined was**  
4 **Superseded by Statute in 1994, as Pointed Out by Schmidt**

5 It is important to note that *American Surety* was not informed of any definition for  
6 “located” in the predecessor statute to § 1348. “No case defining ‘located’, in this connection,  
7 has come to our attention.” *Id.* at 161–62. Given the state of the law in 1943, this is not  
8 surprising.

9 First, *American Surety*’s resort to the citizenship rule for corporations due to an absence of  
10 law on located for national banks is no longer viable now, given the 2006 landmark decision in  
11 *Schmidt*.

12 Furthermore, as pointed out in footnote 1 in *Schmidt*: “**(B) Home State** [¶] The term  
13 “home State” means the State in which the main office of a national bank is located.” 12 U.S.C.  
14 § 36(g)(3)(B) (bold in original) (underline added). “State” appears only in the singular tense.

15 This provision (and entire subsection (g)) was added only in 1994 by the Riegle-Neal  
16 Interstate Banking Act of 1994 (the “1994 Act”), § 103, 103 P.L. 328; 108 Stat. 2338, 2352  
17 (“(12 U.S.C. 36) is amended by inserting after subsection (f) (as added by section 102(b)) the  
18 following new subsection: ‘(g) State ‘Opt-In’ Election To Permit . . . .’”) (emphasis added).

19 So while the 1994 Act permitted national banks to operate across state lines for the first  
20 time (*Schmidt*, 546 U.S. at 307, n. 2), it also simultaneously defined, for the first time (“new  
21 subsection”), the “home State” by where its “main office . . . is located.” The Supreme Court in  
22 *Schmidt* used the “home State” (where its “main office” is) as a national bank’s State for  
23 citizenship.

24 In fact, *Guinto* almost certainly missed the § 36(g)(3)(B) connection made by *Schmidt*. In  
25 footnote 13, *Guinto* held that that fact that the principal place of business phrase does not appear  
26 in § 1348 is no hindrance to applying the principal place of business to the statute, because the  
27 statute refers only to “located” and does not reference the phrase “main office.” *Id.* at \*11, n. 13.  
28 Obviously, *Guinto* misses the fact, as pointed out by *Schmidt* (at n. 1), that “main office” is



1 referenced with “located” in § 36(g)(3)(B).

2 Clearly if § 36(g)(3)(B) had a predecessor in 1943, *American Surety* would not have said  
3 that there was nothing “defining ‘located.’” *Id.* at 161. Therefore, *American Surety*’s premise to  
4 look outside the national bank arena, to corporations, for an “analogy” on citizenship (*Id.* at 162)  
5 was superseded by statute in 1994, as confirmed by *Schmidt*’s footnote 1.

6 Simply put, *American Surety*, in addition to being abrogated by *Schmidt*, was also  
7 superseded by statute, 12 U.S.C. § 36(g)(3)(B), in 1994.

8 **iii. According to the Supreme Court, *American Surety* Was Wrong**  
9 **Even In Applying The Principal Place of Business Test to a**  
10 **Corporation**

11 As detailed in the next section, *American Surety* conducted only a cursory analysis of the  
12 jurisdiction issue. This is evidenced by the fact that its application of the **principal place of**  
13 **business test even to corporations was incorrect**, according to the Supreme Court.

14 As the Supreme Court concluded in *The Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010):  
15 “By 1928 this Court made clear that the ‘state of incorporation’ rule was virtually absolute.” *Id.*  
16 at 1188 (*citing Black and White*, 276 U.S. 518, 522-525 (1928) as “(‘refusing to question  
17 corporation’s reincorporation motives...’).”)

18 In *Hertz*, the Supreme Court conducted a detailed historical analysis of the origins of the  
19 principal place of business test for citizenship. *Hertz*, 130 S. Ct. at 1187–90. That analysis  
20 showed that the courts formulated only the “state of incorporation” test for corporations (*Id.* at  
21 1187–88 citing decisions) and that, after several failed legislative attempts between 1928 and  
22 1957, Congress created, purely by statute, the principal place of business test for citizenship: “in  
23 1958, Congress both codified the courts’ traditional place of incorporation test and also enacted  
24 into law . . . [the] ‘principal place of business’ language.” *Id.* at 1190 (emphases added);  
25 28 U.S.C. § 1332 at Notes to 1958 amendment (“added new subsecs. (b) and (c)”). In other  
26 words, the principal place of business test for citizenship had no common law precursor.

27 While *Hertz* does go on to discuss the earliest meanings of the “principal place of  
28 business” phrase in the bankruptcy context (*Id.* at 1190), those cases necessarily dealt with

1 venue—not jurisdiction. The Constitution gives federal courts original and exclusive jurisdiction  
 2 over bankruptcy. Const. Art. III § 2, and Art. I § 8 (“Congress shall have the Power [¶] To  
 3 establish . . . uniform Laws on the subject of Bankruptcies throughout the United States;”); *see*  
 4 *also* 28 U.S.C. § 1334 (“district courts shall have original and exclusive jurisdiction of all cases  
 5 under Title 11” [Bankruptcy Code]).

6 The principal place of business concept for bankruptcy remains in the venue section  
 7 today. 28 U.S.C. § 1408 (“Venue of Cases Under Title 11. . . . district court for the district (1) in  
 8 which . . . principal place of business in the United States, or principal assets in the United States .  
 9 . . . ) (emphases added).

10 The 1958 origins of principal place of business for jurisdiction had also been confirmed  
 11 separately in *Schmidt*: “A business organized as a corporation, for diversity jurisdiction purposes,  
 12 is ‘deemed to be a citizen of any State by which it has been incorporated’ and, since 1958, also  
 13 ‘of the State where it has its principal place of business.’ § 1332(c)(1).” *Schmidt*, 546 U.S. at 306  
 14 (emphasis added).

15 In fact, even the two (2) cases relied on by *American Surety* for the principal place of  
 16 business test as applicable to corporations, *St. Louis & San Francisco Ry. Co. v. James*, 161 U.S.  
 17 545 (1896) and *Southern Ry. Co. v. Allison*, 190 U.S. 326 (1903), both actually hold that a  
 18 corporation’s state of incorporation was the proper test for citizenship, even if that corporation  
 19 was later authorized to do business in a second state and conferred the title of a “domestic  
 20 corporation” under state law. *St. Louis*, 161 U.S. at 564–65; *Southern*, 190 U.S. 326 at 337. This  
 21 confirms the Supreme Court’s historical analysis in *Hertz* and *Schmidt* on the principal place of  
 22 business test and *American Surety*’s error on the same.

23 In other words, *American Surety*’s application of the principal place of business test in  
 24 1943 is simply irreconcilable with the Supreme Court’s analysis in *Hertz* (and *Schmidt*) and must  
 25 also be ignored on this point.

26 Unfortunately, *Guinto* appears to have relied on *American Surety* as good law as to the  
 27 timing of when the principal place of business test came about for a corporation to depart from  
 28 *WMR*. *Guinto* stated: “The Court is aware of [WMR] . . . WMR e-Pin, reasoning directly from



1 the language and history of Section 1348, found that it does not permit the use of the ‘principal  
2 place of business’ as the ‘location’ of a national bank. That reasoning is precluded in the Ninth  
3 Circuit by *American Surety*.” *Guinto*, No. CIV. S-11-372, 2011 U.S. Dist. LEXIS 114986, at  
4 \*12–13, n. 15 (underline added).

5 As a reminder, the primary reasoning of *WMR*’s majority is that the principal place of  
6 business test for citizenship did not come about until 1958, ten years after § 1348 was enacted in  
7 1948 (“history”). As the above discussion conclusively shows, *American Surety* was incorrect as  
8 to the timing of the principal place of business test even for a corporation, and *Guinto*’s apparent  
9 reliance thereon was in error.

10 Simply put, *American Surety*’s application of the principal place of business test was  
11 simply wrong as a matter of law, as pointed out by the Supreme Court in *Hertz* and *Schmidt*.

12 iv. *American Surety*’s Holding on the Principal Place of Business  
13 Test is Not Controlling

14 *American Surety* merely assumed that the principal place of business test was the correct  
15 standard because it was not aware of any (1943) definition of “located” and (erroneously) used  
16 the principal place of business test only by analogy. *Id.* at 161–62 (“No case defining “located”,  
17 in this connection, has come to our attention. . . . There would appear to be a close analogy  
18 between such a bank and a corporation national in scope.”). It did so in order to review the  
19 subrogation issue on which the trial court’s decision turned. *Id.* at 162–64.

20 In *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 843 (9th Cir. 2009), the Ninth Circuit  
21 held that federal law applied in diversity actions as to the standard for a receiver, even though the  
22 Ninth Circuit had previously held in 1974, by assumption, that state law applied. Pertinent here,  
23 *LaPeter* (at 843, n. 12 (emphases added)) stated:

24 To the extent we have previously applied state law, we did so without  
25 deciding whether state or federal law controlled. Thus, those decisions are  
26 not controlling. *Estate of Bishop v. Bechtel Power Corp.*, 905 F.2d 1272,  
27 1275–76 (9th Cir. 1990) (court not bound by prior cases in which the  
question was *assumed without decision*). . . . *Prudential Ins. Co. of Am. v.*  
*Fifty Assoc.*, 503 F.2d 925, 930 (9th Cir. 1974) (assuming without  
discussion that state law governed . . .)

28 Therefore, because *American Surety* merely assumed that the principal place of business

1 was the standard for a national bank's citizenship, its holding is not controlling.

2 Also germane here, instead of adhering to prior decisions by assumption *LaPeter* chose to  
3 follow more recent and reasoned decisions from other Circuits. *Id.* at 842–43. By this logic, the  
4 very recent and well-reasoned decision of *WMR* from the Eighth Circuit should be followed.

5 **c. The “Mount Line” of Decisions is No Longer**

6 In *Mount v. Wells Fargo Bank, N.A.*, No. CV 08-6298, 2008 U.S. Dist. LEXIS 98193,  
7 at \*4 (C.D. Cal. Nov. 24, 2008) (J. Feess), a court in the Central District of California held that  
8 Wells Fargo was also a citizen of California because its principal place of business is located  
9 there. *See also Saberi v. Wells Fargo Home Mortgage*, No. 10CV1985, 2011 U.S. Dist. LEXIS  
10 5286, at \*7–8 (S.D. Cal. Jan. 20, 2011) (following *Mount*'s principal place of business test).  
11 However, the *Mount* Court (Judge Feess) re-examined the issue of Wells Fargo's citizenship in  
12 *Kasramehr v. Wells Fargo Bank N.A.*, No. CV 11-0551, 2011 U.S. Dist. LEXIS 52930, at \*6  
13 (C.D. Cal. May 17, 2011) and “conclude[d] that under [28 U.S.C.] § 1348, a national banking  
14 association is a citizen of the state of its main office as designated in its articles of association,  
15 and not also a citizen of the state of its principal place of business. Thus, Wells Fargo is a citizen  
16 of South Dakota.” The Court noted that the principal place of business provision in 28 U.S.C. §  
17 1332(c)(1), applicable to state-chartered corporations, did not come into existence until ten (10)  
18 years after Section 1348, applicable to national banking associations, was enacted, and that if  
19 “Congress had intended for national banks likewise to be deemed citizens of the states of their  
20 principal places of business, it likely would have similarly amended § 1348 to contain a reference  
21 to national banks’ ‘principal places of businesses.’ Its failure to do so suggests that Congress did  
22 not intend for a national bank to be deemed a citizen of the state of its principal place of  
23 business.” *Id.* at \*5–6 (emphases added). Therefore, *Kasramehr* effectively vacated the Court's  
24 own decision in *Mount*, and by implication, all decisions following *Mount* and its principal place  
25 of business test, such as *Saberi*, *Gutterman v. Wachovia Mortgage*, No. CV 11-1611, 2011 U.S.  
26 Dist. LEXIS 74521 (C.D. Cal. Mar. 31, 2011) (J. Feess), *Goodman v. Wells Fargo Bank, N.A.*,  
27 No. CV 11-2685, 2011 U.S. Dist. LEXIS 63165 (C.D. Cal. June 1, 2011) (J. Walter), *Naumoff v.*  
28 *Wells Fargo Bank*, No. CV 11-7106, 2011 U.S. Dist. LEXIS 128045 (C.D. Cal. Nov. 2, 2011)



1 and *Stewart v. Wachovia Mortgage*, No. CV 11-06108, 2011 U.S. Dist. LEXIS 85822 (C.D. Cal.  
 2 Aug. 2, 2011) (J. Morrow); *see also McNeely v. Wells Fargo Bank, N.A.*, No. SACV 11-01370,  
 3 2011 U.S. Dist. LEXIS 126970, at \*9 (C.D. Cal. Nov. 1, 2011) (noting *Mount*'s reversal and  
 4 finding only South Dakota citizenship).

5 In fact, Judge Morrow of *Stewart* (which had also followed *Mount*) also subsequently  
 6 changed her position in *Mireles v. Wells Fargo Bank, N.A.*, No. CV 11-07720, 2012 U.S. Dist.  
 7 LEXIS 3871 (C.D. Cal. 2012): "Recognizing Congress's intent to create parity, the *Excelsior*  
 8 court noted that at the time § 1348 was enacted, a state bank was only a citizen of a single state:  
 9 the state in which was incorporated. [citation]. As a result, jurisdictional parity at the time the  
 10 statute was passed was achieved by limiting a national bank's citizenship to a single location."  
 11 *Id.* at \*6 (emphasis added).

12 Relevant to the present, Judge Morrow pointed out that it would not be appropriate to  
 13 depart from a historical construction of § 1348, which was enacted in its present form in 1948,  
 14 because "one can only speculate as to what Congress' intent would have been had it known that  
 15 the citizenship of state banks would be changed decades in the future." *Id.* at \*68 (emphasis  
 16 added).

17 In addition to *Kasramehr* and *Mireles*, numerous other unpublished District Court  
 18 decisions in California have also held that Wells Fargo is only a citizen of California, this is in  
 19 addition to the uniform, post-Schmidt published decisions. *See also Tse v. Wells Fargo Bank,*  
 20 *N.A.*, No. C10-4441, 2011 U.S. Dist. LEXIS 6796, at \*8 (N.D. Cal. Jan. 19, 2011) ("Wells Fargo  
 21 is a citizen of South Dakota;" denying motion to remand); *Atienza v. Wells Fargo Bank, N.A.*, No.  
 22 C 10-03457, 2011 U.S. Dist. LEXIS 1738, at \*6 (N.D. Cal. Jan. 4, 2011) ("Thus, Wells Fargo is a  
 23 citizen of South Dakota for purposes of diversity jurisdiction."); *Giordano v. Wachovia*  
 24 *Mortgage, FSB*, No. 5:10-cv-04661, 2010 U.S. Dist. LEXIS 136284, at \*5 (N.D. Cal. Dec. 14,  
 25 2010) (finding Wells Fargo is a citizen of South Dakota; denying motion for remand); *Silva v.*  
 26 *Wells Fargo Bank, NA*, No. CV 11-3200, 2011 U.S. Dist. LEXIS 64636, at \*6 (C.D. Cal. June 16,  
 27 2011) ("Wells Fargo's main office is in South Dakota. [Citation.] It is accordingly, a citizen of  
 28 South Dakota."); *Albarran v. Wells Fargo Bank*, No. SACV 11-00548, 2011 U.S. Dist. LEXIS

59635, at \*4 (C.D. Cal. May 26, 2011) (“Wells Fargo is a citizen of South Dakota because Wells Fargo’s main office, as set forth in its articles of association, is located in Sioux Falls, South Dakota.”); *Taguinod v. World Sav. Bank, FSB*, No. CV 10-7864, 2010 U.S. Dist. LEXIS 140509, at \*4 (C.D. Cal. Dec. 2, 2010) (Wells Fargo is deemed to be a citizen of South Dakota.); *Cochran v. Wachovia Bank, N.A.*, No. CV 10-018, 2010 U.S. Dist. LEXIS 38379, at \*3 (C.D. Cal. Mar. 9, 2010); *Marzette v. Provident Sav. Bank, F.S.B.*, 2011 U.S. Dist. LEXIS 130657, \* 3–4 (E.D. Cal. 2011); *Heard-Rodriguez v. World Savings Bank, FSB*, No. CV 12-00129, 2012 U.S. Dist. LEXIS 43529, \* 4-5 (C.D. Cal. Mar. 28, 2012); *Forsythe v. Wells Fargo Bank, N.A.*, No. CV 12-00139, 2012 U.S. Dist. LEXIS 44031, \* 5 (C.D. Cal. Mar. 28, 2012) (“As the Supreme Court has noted, section 1348 governs national banks and section 1332(c)(1) governs corporations.”).

Accordingly, Wells Fargo is only a citizen of South Dakota for diversity purposes.

### 3. Amount in Controversy

The amount in controversy exceeds \$75,000. Compl. Prayer for Relief (“Award of \$10,000 in statutory and actual damages . . . . Award punitive damages in an amount to deter further unlawful . . . .”) Generally, “[t]he amount in controversy is determined from the allegations or prayer of the complaint.” Schwarzer et al., *Fed. Civ. Proc. Before Trial*, ¶ 2:450 (2009) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938), which held that an inability to recover an amount adequate to give the court jurisdiction does not oust the court of jurisdiction).

## B. FEDERAL QUESTION JURISDICTION

1. This is a civil action over which this Court has original jurisdiction. 28 U.S.C. § 1331 (governing federal question jurisdiction). The state court action is removable pursuant to 28 U.S.C. § 1441(b) because it arises under the Fair Credit Reporting Act -- 15 U.S.C. § 1681s-2(b) -- a federal statute.

2. In addition, this Court has supplemental jurisdiction over the remaining eight claims listed in Plaintiff’s complaint, which purport to be grounded in state law. *See* 28 U.S.C. §§ 1367(a) & 1441(c).



## II. TIMELINESS

This Notice is timely, pursuant to 28 U.S.C. § 1446(b), because Wells Fargo received the complaint on July 3, 2012. The other defendants are Does, which are ignored for diversity purposes. Thus, no other joinders are required to perfect removal of the State Court Action. *Salveson v. Western States Bankcard Ass'n*, 730 F.2d 1423, 1429 (9th Cir. 1984).

## III. OTHER PERTINENT INFORMATION

A. Pursuant to 28 U.S.C. § 1446(a), Wells Fargo files this Notice in the District Court of the United States for the district and division within which the State Court Action is pending. As such, this case is being removed to the United States District Court for the Northern District of California, San Francisco or Oakland Division, because the State Court Action is pending in Alameda County. See 28 U.S.C. § 1441(a); Civil L.R. 3-2(d).

B. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice with its attachments will promptly be served on plaintiff in the State Court Action, and notice thereof will be filed with the clerk of the Alameda County Superior Court.

WHEREFORE, Wells Fargo hereby removes Alameda County Superior Court Case No. HG12637438 to the United States District Court for the Northern District of California.

DATED: July 24, 2012

Respectfully submitted,

SEVERSON & WERSON  
A Professional Corporation

By: /s/ Alisa A. Givental  
Alisa A. Givental

Attorneys for Defendant  
WELLS FARGO BANK, N.A.

## EXHIBIT A





CORPORATION SERVICE COMPANY'

## Notice of Service of Process

CRH / ALL  
Transmittal Number: 10082453  
Date Processed: 07/05/2012

**Primary Contact:** WF West - WF Bank  
Corporation Service Company- Wilmington, DELAWARE  
2711 Centerville Rd  
Suite 400  
Wilmington, DE 19808

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<b>Entity:</b>	Wells Fargo Bank, National Association Entity ID Number 2013649
<b>Entity Served:</b>	Wells Fargo Bank, National Association
<b>Title of Action:</b>	Sarah Montgomery vs. Wells Fargo Bank, National Association
<b>Document(s) Type:</b>	Summons/Complaint
<b>Nature of Action:</b>	Contract
<b>Court/Agency:</b>	Alameda County Superior Court, California
<b>Case/Reference No:</b>	HG12637438
<b>Jurisdiction Served:</b>	California
<b>Date Served on CSC:</b>	07/03/2012
<b>Answer or Appearance Due:</b>	30 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Scott J. Sagaria 408-279-2288
<b>Client Requested Information:</b>	Matter Management User Groups: [Service of Process]

---

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**  
*CSC is SAS70 Type II certified for its Litigation Management System.*  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscinfo.com](mailto:sop@cscinfo.com)

SUM-100

# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

Wells Fargo Bank, National Association an FDIC insured corporation  
and DOES I through 100 inclusive

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Sarah Montgomery

FOR COURT USE ONLY  
EMPOWERS  
FILED  
ALAMEDA COUNTY

JUL - 2 2012

CLERK OF THE SUPERIOR COURT  
By \_\_\_\_\_ CHERYL CLARK

Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the Information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorta.ca.gov](http://www.sucorta.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorta.ca.gov](http://www.sucorta.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Alameda

24405 Amador Street  
Hayward CA, 94544

CASE NUMBER:  
(Número del Caso): **HA 12637438**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Elliot Gale, 333 West San Carlos Street, Suite 1750 San Jose, CA 95110, 1-408-279-2288

DATE: July 2, 2012

(Fecha) **JUL - 2 2012**

**PAT S. SWEETEN**

Clerk, by

**CHERYL CLARK**

Deputy

Executive Officer/Clerk of the Superior Court

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

**Wells Fargo Bank, National Association an FDIC insured**

3. ☒ on behalf of (specify): **Corporation**

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.80 (minor)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>SCOTT J. SAGARIA (BAR # 217981)</b> <b>ELLIOT W. GALE (#263326)</b> <b>SAGARIA LAW, P.C.</b> <b>333 West San Carlos Street, Suite 1750 San Jose, CA 95110.</b> TELEPHONE NO.: 408-279-2288 FAX NO.: 408-279-2299		FOR COURT USE ONLY  <b>ENDORSED FILED ALAMEDA COUNTY</b>  <b>JUL - 2 2012</b>  CLERK OF THE SUPERIOR COURT <b>CHERYL CLARK</b> Deputy
ATTORNEY FOR (Name): <b>Sarah Montgomery</b> SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Alameda</b> STREET ADDRESS: <b>24405 Amador Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Hayward CA, 94544</b> BRANCH NAME: <b>Civil</b>		
CASE NAME: <b>Montgomery v. Wells Fargo Bank, National Association</b>		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> <b>Unlimited (Amount demanded exceeds \$25,000)</b> <input type="checkbox"/> <b>Limited (Amount demanded is \$25,000 or less)</b> Complex Case Designation <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
JUDGE: <b>FLG 12637438</b> DEPT:		

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorists (48) <b>Other PIPD/W (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (46) <input type="checkbox"/> Other PIPD/W (23) <b>Non-PIP/W (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (10) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/W tort (36) <b>Employment</b> <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties    d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve    e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence    f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☒ punitive
4. Number of causes of action (specify): **Three**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 2 2012

Elliot Gale

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 of seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX



CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

## Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability *(not asbestos or toxic/environmental)* (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other P/DPDWD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PDWD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other P/DPDWD

## Non-P/DPDWD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice *(not medical or legal)*  
Other Non-P/DPDWD Tort (35)  
Employment  
Wrongful Termination (38)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)  
Enforcement of Judgment  
Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Sister State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL - 2 2012

CLERK OF THE SUPERIOR COURT

By CHERYL CLARK

Deputy

1 SCOTT J. SAGARIA (BAR # 217981)  
2 SJsagaria@sagarialaw.com  
3 ELLIOT W. GALE (BAR #263326)  
4 Egale@sagarialaw.com  
5 SAGARIA LAW, P.C.  
6 333 West San Carlos Street, Suite 1750  
7 San Jose, CA 95110  
8 408-279-2288 ph  
9 408-279-2299 fax

Attorneys for Plaintiff

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

CASE NO.:

HK 12637438

COMPLAINT FOR DAMAGES:

1. Violation of Fair Credit Reporting Act;
2. Violation of California Consumer Credit Reporting Agencies Act;
3. Violation of California Unfair Business Practices Act;

SARAH MONTGOMERY,

Plaintiff,

v.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION an FDIC insured  
corporation and DOES 1 through 100  
inclusive,

Defendants.

COMES NOW Plaintiff SARAH MONTGOMERY, an individual, based on information and belief, to allege as follows:

### INTRODUCTION

1. This action seeks redress for the unlawful and deceptive practices committed by the Defendants in connection with their inaccurate reporting of Plaintiff's discharged debt. In particular, Defendants' conduct involves improperly continuing to report Plaintiff's account "charged off" instead of discharged in bankruptcy, after receiving notice of Plaintiff's dispute from Equifax. Plaintiff seeks monetary and declaratory relief based on violations of Fair Credit Reporting Act, 15 U.S.C. 1681 et. seq., and California Consumer Credit Reporting Act, California Civil Code §1785.1 et seq. Additional causes of actions are stated for violations of the California Business and Professions Code 17200.

### JURISDICTION AND VENUE

2. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, fully set forth herein.
3. Plaintiff, Isagani Asuncion (hereinafter "Plaintiff"), is an individual and currently resides in the county of Alameda, California.
4. This venue is proper pursuant to California Code of Civil Procedure § 395.5.
5. This Court has jurisdiction over Plaintiff's allegations pursuant to California Code of Civil Procedure § 410.10 et seq.
6. Plaintiff is a natural person and competent adult who at all relevant times in this Complaint resided in the State of California.
7. Defendant, Wells Fargo Bank, National Association (hereinafter "Creditor") is located at 101 N. Phillips Ave., Sioux Falls SD 57104. Creditor collects debts on its own behalf throughout the county of Alameda.
8. Plaintiff is unaware of the true names and capacities of Defendants DOES 1 through 100, inclusive. Plaintiff is informed and believes and thereon alleges that each fictitious Defendant was in some way responsible for the matters and things complained of herein, and in some fashion, has legal responsibility therefore. When the exact nature



and identity of each fictitious Defendant's responsibility for the matters and things herein alleged are ascertained by Plaintiff, Plaintiff will seek to amend this Complaint and all proceedings to set forth the same, pursuant to California Code of Civil Procedure 474.

9. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of Defendant is, and at all relevant times herein was, the agent, employee, and alter ego of each of the remaining Co-Defendants, and in committing the acts herein alleged, was acting in the scope of their authority as such agents, employees, or alter egos and with the permission and consent of the remaining Co-Defendants.

#### **PRE-LITIGATION CLAIM FILINGS**

10. On or about April 30, 2011 Plaintiff sent Equifax a written notice disputing Creditor's improper reporting of Plaintiff's account as "charged off" instead of discharged in bankruptcy. Pursuant to Section 1681i(a)(2) of the Fair Credit Reporting Act, Equifax provided notice to Creditor of Plaintiff's dispute. After receiving notice of Plaintiff's allegations, Creditor verified that it received notice of Plaintiff's from Equifax and continued inaccurately reporting the collection notation.

#### **GENERAL ALLEGATIONS**

11. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, as though fully set forth herein.
12. On March 8, 2010 Plaintiff filed a joint voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of California.
13. In the Schedules filed with the petition in this case and on the master mailing matrix filed with the Clerk of this Court, an unsecured debt was listed on Schedule F in favor of Creditor in the amount of \$8,718.00 (hereinafter "Debt").
14. On June 2, 2010 Plaintiff was granted a discharge of all dischargeable debts pursuant to 11 U.S.C. § 727. Creditor was noticed by electronic transmission of Plaintiff's

1 discharge on June 5, 2010. Since Plaintiff never re-affirmed Creditor's debt during  
2 bankruptcy, Plaintiff alleges that this Discharge included the debt to Creditor.

3 15. On April 30, 2011 Plaintiff sent written notice to Equifax specifically disputing  
4 Creditor's inaccurate reporting of Plaintiff's account as in "collection" after Plaintiff  
5 received a discharge in bankruptcy.

6 16. On May 31, 2011 Plaintiff received a copy of her Equifax credit report a compilation of  
7 credit reports from in order to verify that the inaccuracies on Plaintiff's credit report  
8 were corrected. Creditor continued reporting to Equifax Plaintiff's account as charged  
9 off rather than discharged in bankruptcy.

10 17. To date, Creditor refuses to correct Plaintiff's credit report despite being noticed of the  
11 original bankruptcy and re-noticed of its inaccurate reporting from Equifax.

12 18. The actions of Creditor as alleged herein are acts in violation of the Fair Credit  
13 Reporting Act, 15 U.S.C. § 1681s-2(b).

14 19. The actions of Creditors as alleged herein are acts in violation of the consumer credit  
15 reporting agencies act California Civil Code § 1785.25(a).

16 20. The actions of Creditors as alleged herein are acts in violation of the California  
17 Business and Professions Code § 17200.

18 **FIRST CAUSE OF ACTION**

19 (Violation Of Fair Credit Reporting Act

20 15 U.S.C. § 1681s-2(b))

(Against Defendant Creditor and Does 1-100)

21 21. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
22 every paragraph above, as though fully set forth herein.

23 22. Creditor, in the course of regular business, reports information to credit reporting  
24 agencies.

25 23. Plaintiff promptly disputed Creditor's inaccurate reporting with Equifax. Equifax sent  
26 notice of Plaintiff's dispute to Creditor pursuant to Section 1681i(a)(2) of the Fair  
27 Credit Reporting Act. Creditor was thereafter under a duty to reasonably investigate  
28 Plaintiffs dispute and to modify, delete, or block the information if the investigation

1 finds the information is incomplete or inaccurate pursuant to section 15 U.S.C. 1681s-  
2 2(b)(1)(A) & (E).

3 24. Plaintiff is informed that Creditor violated 15 U.S.C. 1681s-2(b)(1)(A) by failing to  
4 reasonably investigate Plaintiff's dispute after receiving notice from Equifax.  
5 Specifically, Plaintiff is informed that Creditor, after receiving notice of Plaintiff's  
6 dispute from Equifax, should have discovered from its records, including the two  
7 notices sent from the bankruptcy noticing center, that Plaintiff's account was  
8 discharged in bankruptcy. Because Plaintiff was no longer personally obligated to pay  
9 the preexisting debt with Creditor, Creditor should not have reported the account as  
10 open and charged off.

11 25. Plaintiff is informed that Creditor violated 15 U.S.C. 1681s-2(b)(1)(E) by failing to  
12 discover and remove the derogatory delinquent notation on Plaintiff's credit report.  
13 Specifically, Creditor should have reported to Equifax that Plaintiff's credit report  
14 should indicate that Plaintiff's account was discharged in bankruptcy.

15 26. Creditor's failure to correct the previously disclosed inaccuracies on Plaintiff's credit  
16 report was intentional and in reckless disregard of its duty to refrain from reporting  
17 inaccurate information. Consequently, creditor willfully and negligently failed to  
18 comply with its duty to investigate Plaintiff's dispute under 15 U.S.C. 1681(n) & (o).

19 27. As a direct and proximate result of Creditor's willful and untrue communications,  
20 Plaintiff has suffered actual damages including but not limited to reviewing credit  
21 reports from all three consumer reporting agencies, traveling to and from Plaintiff's  
22 counsel's office, sending demand letters, continued impairment to her credit score, and  
23 such further expenses in an amount to be determined at trial.

24 28. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred  
25 pain and suffering, was impeded in seeking necessary products and services from  
26 vendors and additional credit from other credit agencies.

27 29. Wherefore, Plaintiff prays for judgment as hereinafter set forth.  
28



**SECOND CAUSE OF ACTION**

(Violation Of Consumer Credit Reporting Agencies Act  
California Civil Code § 1785.25(a))  
(Against Defendants Creditor and Does 1-100)

30. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, as though fully set forth herein.
31. Creditor, in the ordinary course of business, regularly and on a routine basis furnishes information to one or more consumer credit reporting agencies.
32. Creditor intentionally and knowingly reported inaccurate and false information regarding delinquency in payment after Plaintiff received a discharge in bankruptcy to credit reporting agencies in violation of California Civil Code § 1785.25(a).
33. Creditor should have discovered through investigation that the reported information of Plaintiff's account was inaccurate.
34. Creditor failed to correct inaccurate information provided to the agencies as described hereinabove in violation of California Civil Code § 1785.25(a).
35. Creditor's communications of false information, and repeated failures to investigate, and correct their inaccurate information and erroneous reporting were done knowingly, intentionally, and in reckless disregard for their duties and Plaintiff's rights.
36. As a direct and proximate result of Creditors willful and untrue communications, Plaintiff has suffered actual damages including but not limited to reviewing credit reports from all three consumer reporting agencies, traveling to and from Plaintiff's counsel's office, sending demand letters, continued impairment to her credit score, and such further expenses in an amount to be determined at trial.
37. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred pain and suffering, was impeded in seeking necessary products and services from vendors and additional credit from other credit agencies.
38. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

**THIRD CAUSE OF ACTION**  
(Unfair Business Practices Act  
California Business and Professions Code § 17200)  
(Against Defendant Creditor and Does 1-100)

58. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, as though fully set forth herein.

59. Plaintiff brings this action in individual capacity and on behalf of the general public.

60. Creditor at all times relevant to this Complaint, was engaged in the business of collections and providing services on credit to qualified applicants.

61. Commencing on or about January 18, 2011 and continuing to the present, Creditor committed the acts of unfair practices as defined by Business and Professions Code § 17200 and described in the above stated Causes of Action.

62. Creditor's misleading and unfair practice within the meaning of Business and Professions Code § 17200 specifically includes Creditor's continued inaccurate reporting after receiving notice of Plaintiff's dispute in violation of California Civil Code § 1785.25(a).

63. These unfair and unlawful business practices of Creditor are likely to continue and therefore will continue to injure Plaintiff and mislead the public by inaccurate record keeping, failure to correct inaccuracies and erroneous dissemination of inaccurate information, and present a continuing threat to the public.

65. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- a. For preliminary and permanent injunctive relief to stop Defendants from engaging in the conduct described above;
- b. Award \$10,000 in statutory and actual damages pursuant to 15 U.S.C. § 1681n and California Civil Code § 1785.31;
- c. Award punitive damages in an amount to deter further unlawful conduct pursuant to 15 U.S.C. § 1681n; and California Civil Code § 1785.31

- 1 d. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. §  
2 1681n & o; and California Civil Code § 1785.31;  
3 e. For determination by the Court that Creditor's policies and practices are  
4 unlawful and in willful violation of 15 U.S.C. § 1681n, et seq.; California  
5 Business and Professions Code § 17200, et seq.; and California Civil Code §§  
6 45, 1785.25(g), et seq.;  
7 f. For determination by the Court that Creditor's policies and practices are  
8 unlawful and in negligent violation of 15 U.S.C. § 1681o;  
9 g. For such other and further relief as the court deems appropriate under the  
10 circumstances.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands trial of this matter by jury.

13  
14  
15 **SAGARIA LAW, P.C.**

16  
17 Dated: July 2, 2012

By:

18   
19 Elliot Gale, Esq.  
20 Attorneys for Plaintiff  
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## Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

**QUESTIONS?** Call (510) 891-6055. Email [adrprogram@alameda.courts.ca.gov](mailto:adrprogram@alameda.courts.ca.gov)  
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

### What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

### What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

### What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
  - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
- **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
- **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

#### **Mediation Service Programs In Alameda County**

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

##### **SEEDS Community Resolution Center**

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: [www.seedscrc.org](http://www.seedscrc.org)

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

##### **Center for Community Dispute Settlement**

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: [www.trivalleymediation.com](http://www.trivalleymediation.com)

CCDS provides services in the Tri-Valley area for all of Alameda County.

##### *For Victim/Offender Restorative Justice Services*

##### **Catholic Charities of the East Bay: Oakland**

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: [www.cceb.org](http://www.cceb.org)

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY  STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<b>STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS</b>	CASE NUMBER: _____

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: \_\_\_\_\_ An Initial Case Management Conference is scheduled for:

Date:

Time:

Department:

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- ☐ Court mediation      ☐ Judicial arbitration  
☐ Private mediation      ☐ Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PLAINTIFF)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

Page 1 of 2



ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)      ▶      \_\_\_\_\_  
(SIGNATURE OF DEFENDANT)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)      ▶      \_\_\_\_\_  
(SIGNATURE OF ATTORNEY FOR DEFENDANT)